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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,652	03/29/2004	Daniel J. Hill	JFMZ 2 00170	2455
27885	7590	06/21/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			ARK, DARREN W	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/811,652	Applicant(s) HILL, DANIEL J.	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: no. 106, second end of set lever pin 100 is not shown in any of the Figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14-17, 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 14, the phrase "wherein none of the moveable components extend from the housing" renders the claim vague and indefinite since the components recited thereafter in claim 14 all extend from the inner surfaces of the housing of applicant's desired invention and therefore such a limitation is not accurate.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-17, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lehn 2,534,358.

Lehn discloses a frame with an upper wall (7) and at least one sidewall (8), a first opening (one of 9) and a second opening (another of 9 diametrically opposite from one of 9) spaced from the first opening and through which an animal can see so that the burrow appears uninterrupted; a striker (15); a biasing member (18, 18a); a set lever (16); a trigger (17) which is positioned in a manner such that the burrow appears uninterrupted (has openings and does not fully extend across opening).

In regard to claim 14, Lehn discloses a housing (1) with an entry opening (one of 9); a plurality of components, wherein none of the following components extend outside the housing, the components comprising a striker (15), a biasing member (18, 18a), a set lever (16), and a trigger (17).

Art Unit: 3643

6. Claims 9, 11, 12, 14-17, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by European Pat. No. 954,964 to Engstrom.

Engstrom discloses frame with an upper wall (see Fig. 1) and at least one sidewall (see Fig. 2), a first opening (16) and a second opening (one of holes in 17 seen in Fig. 2) through which an animal can see that its burrow appears uninterrupted (not completely shut off); a striker (2); a biasing member (3); a set lever (7); a trigger (8) which is positioned such that the burrow appears uninterrupted (sits relatively low so as not to be easily seen).

In regard to claim 14, Engstrom discloses the striker, biasing member, set lever and trigger mounted so as to extend within the housing (see Figs. 1, 2).

7. Claims 1-17, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kania 4,425,732.

Kania discloses a frame with an upper wall (14) and at least one sidewall (13), a first opening (17) and a second opening (18) through which the animal can see so that its burrow appears uninterrupted (through 19); a striker (29); a biasing member (28); a set lever (44); a trigger (47, 50) which is positioned in a manner such that the burrow appears uninterrupted (does not completely cover the view of 18).

In regard to claim 14, Kania discloses the components as recited which extend in the housing (each part has a portion extending within the housing).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehn 2,534,358 in view of Canadian Pat. No. 694,163.

Alternatively, Lehn does not disclose positioning a pin adjacent the entry opening. Killinger discloses placing a pin (16) adjacent an entry opening (11, 12 in Fig. 1). It would have been obvious to a person of ordinary skill in the art at the time the of the invention to modify the method of Lehn such that a pin is positioned adjacent the entry opening in view of Killinger in order to anchor the device to the ground and maintain the trap position as desired.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehn 2,534,358.

Lehn does not disclose the opening in the plate being larger than the entry opening. It would have been an obvious matter of design choice to make the opening in the plate such that it is larger than the entry opening since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the device Lehn would perform equally as well by doing so, and because by making the opening in the plate larger than the entry opening would allow the trigger plate to not be readily visible to the rodent and not present a possible obstacle through

the housing to the second opening and also allow a larger portion of the rodent to enter the trap before triggering the striker.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over European Pat. No. 954,964 to Engstrom in view of Canadian Pat. No. 694,163.

Engstrom does not disclose positioning a pin adjacent the entry opening. Killinger discloses placing a pin (16) adjacent an entry opening (11, 12 in Fig. 1). It would have been obvious to a person of ordinary skill in the art at the time the of the invention to modify the method of Engstrom such that a pin is positioned adjacent the entry opening in view of Killinger in order to anchor the device to the ground and maintain the trap position as desired.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kania 4,425,732 in view of Canadian Pat. No. 694,163.

Alternatively, Kania does not disclose positioning a pin adjacent the entry opening. Killinger discloses placing a pin (16) adjacent an entry opening (11, 12 in Fig. 1). It would have been obvious to a person of ordinary skill in the art at the time the of the invention to modify the method of Kania such that a pin is positioned adjacent the entry opening in view of Killinger in order to anchor the device to the ground and maintain the trap position as desired.

13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kania 4,425,732.

Kania does not disclose the opening in the plate being larger than the entry opening. It would have been an obvious matter of design choice to make the opening in

the plate such that it is larger than the entry opening since applicant has not disclosed that by doing so is critical to the design or produces any unexpected results and it appears that the device Kania would perform equally as well by doing so, and because by making the opening in the plate larger than the entry opening would allow the trigger plate to not be readily visible to the rodent and not present a possible obstacle through the housing to the second opening and also allow a larger portion of the rodent to enter the trap before triggering the striker.

Response to Arguments

14. Applicant's arguments filed 5/4/2005 have been fully considered but they are not persuasive.

In regard to applicant's argument that "Lehn...arm 39 makes the animal's run appear interrupted...", the Examiner contends that the appearance of what constitutes interrupted or uninterrupted is subjective and that if an animal sees that there is some space provided about the arm then the animal may think that it is therefore uninterrupted therethrough to the second opening.

In regard to applicant's argument that "Engstrom fails to disclose a second opening...", the Examiner contends that in Fig. 2 of Engstrom there is shown openings in the rear wall (17) that give the appearance of an uninterrupted burrow to an animal since the rear wall is not solid.

In regard to applicant's argument that "Lehn discloses a moveable setting button 14...Engstrom...a handle 4...Kania...a spring 28...", the Examiner contends that the

Art Unit: 3643

claim is not written in a manner which excludes other structure of the prior art mechanisms of Lehn, Engstrom, and Kania than the striker, biasing member, set lever, and trigger and that such recitation as cited above under 35 U.S.C. 112, 2nd paragraph rejections renders the claim vague and indefinite.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3643

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA